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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,864	02/03/2004	Andrew P. Dove	06005/35142A	3507

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EXAMINER

HARTMAN JR, RONALD D

ART UNIT PAPER NUMBER

2121

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/771,864	<b>Applicant(s)</b> DOVE ET AL.	
	<b>Examiner</b> Ronald D. Hartman Jr.	<b>Art Unit</b> 2121	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-39 is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101 (maintained)***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-36 are directed to non-statutory subject matter.

As per claim 1, the claim does not provide a tangible real world result, and in addition, the claim also claims an application that is, at best, software, per se. Software is subject matter that is considered to be non-statutory in nature, and the fact that the claim also does not provide for a tangible real world result also forms a deficiency with respect to 35 U.S.C. 101.

Claim 2 also does not require the displaying of the data, but rather, claims that data includes a special characteristic *when* displayed. When is not considered to present a feature that is positively recited, but rather, includes a scenario that may or may not ever occur.

It does not appear that any of pending claims 3-18 overcome the outstanding rejections formed under 35 U.S.C. 101.

Claim 19 also suffers from the same deficiencies of claim 1, and therefore the rationale already set forth with respect to claim 1 is equally applied herein. The only discernable difference with respect to claims 1 and 19 are that claim 19 claims a "process control element", while claim 1 claims "a process control application". However, both are interpreted to represent one and the same, that is, a system of software, per se.

It does not appear that any of pending claims 20-27 overcome the outstanding rejections formed under 35 U.S.C. 101.

As per claim 28, this system claimed does not correlate to a system of software since it provides for actual hardware. However, this claim still does not provide for a tangible real world result. As is the case with "adapted for" and "when", "displayable"

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does not actually require the data to be displayed, it merely asserts that the data may or may not be displayed, that is, "displayable" does not necessarily require the data to be displayed, but rather, simply claims that it might be. This is not considered to be a positively recited feature.

It is noted that claim 29 positively recites, in other words requires, the display of the data. It is also noted that this claimed also provides for a tangible real world result of the data by displaying it.

It does not appear that any of pending claims 30-36 overcome the outstanding rejections formed under 35 U.S.C. 101, with respect to claim 28.

### ***Response to Arguments***

As per the amendment of claims 1 and 19, it is noted that amending the claim to recite "adapted for display" does not change the fact that there is no tangible real word result claimed for the textual information. "Adapted for" does not change the fact that the claim is claiming software, per se, and that there is no tangible real world result claimed for the application. "Adapted for" just means that the software claimed by claim 1 may be displayed or it may be stored, it does not require either.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D. Hartman Jr. whose telephone number is (571) 272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ronald D Hartman Jr.  
Patent Examiner  
Art Unit 2121

RDH

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Anthony Knight  
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